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DEPARTMENT OF JUSTICE

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December 8, 2021

VIA CM/ECF

The Honorable Cynthia M. Rufe
12614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

RE: November 17, 2021 Order Overruling in Part and Adopting in Part Special Master Marion's Supplemental Fifth Report and Recommendation

Dear Judge Rufe:

Pursuant to the Court's November 17, 2021 Order Overruling in Part and Adopting in Part Special Master Marion's Supplemental Fifth Report and Recommendation ("R&R"), Plaintiff State of California objects to Par Pharmaceutical, Inc.'s ("Par") request for attorneys' fees to the extent it exceeds the amount of \$55,463 cited in the Court's November 17 Order. California reviewed Par's documentation and does not question the reasonableness of Par's fees.¹ However, California submits this letter because it believes that any fees above this amount are beyond the scope of the Court's November 17 Order and are not permitted under Federal Rule of Civil Procedure 37(a)(5)(A). Accordingly, Par's request for fees should be reduced from \$103,810.50 to the amount of \$55,463 in the Order.

Par's expanded fees request, which includes work done in connection with California's Objection to the R&R, is misplaced. The November 17 Order refers specifically to Federal Rule of Civil Procedure 37(a)(5)(A), which permits the recovery of attorneys' fees for successful motions to compel. Order at 8. Here, the sole motion to compel is the one that was the subject of Par's March 19 sanctions application. *See* R&R at 5 (recommending "an award of reasonable attorney's fees incurred by Defendants in prosecuting *this motion to compel*." (emphasis added); *see also* Exhibit A. Moreover, the November 17 Order's only reference to fees is the \$55,463 figure, the amount requested by Par in connection with its motion to compel. Order at 8. The Court makes no reference to fees incurred in connection with California's Objection to the R&R nor does it invite an application for additional fees. *See* Order at 9 (directing Par only to submit documentation of its fees). Thus, there is no basis for Par's fees request in excess of \$55,463.

¹ During the parties' meet-and-confer discussions, California informed Par that it was prepared to pay \$55,463.

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Even if California's Objection to the R&R could somehow be considered a continuation of Par's motion to compel, which California maintains it cannot, Par would not be entitled to its new fee amount because the Court sustained California's objection as to the evidence preclusion sanctions. Order at 7. Under this scenario, attorneys' fees would have to be considered pursuant to Federal Rule of Civil Procedure 37(a)(5)(C), which concerns motions granted in part and denied in part. *See* Fed. R. Civ. P. 37(a)(5)(C). Again, the November 17 Order relies on Rule 37(a)(5)(A) and no other subsection of Rule 37. In addition, granting Par's expanded fees request to include fees in connection with California's Objection to the R&R could have the adverse effect of chilling parties from exercising their right under Federal Rule of Civil Procedure 53(f) to object to a special master's recommendation out of fear that they may be required to pay the entirety of the other party's fees—even if the objection is partially successful.

For the foregoing reasons, California respectfully requests that the Court reject Par's request for fees above its originally requested amount of \$55,463.

Respectfully submitted,

/s/ Michael D. Battaglia

Michael D. Battaglia

Deputy Attorney General

For ROB BONTA
 Attorney General of California

CC: All Counsel (by ECF)